In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.16406 of 2006

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Date of decision:1610.2006

Ashwani Kumar and others

.....Petitioners

v.

State of Haryana and another

.....Respondents

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Coram: Hon'ble Mr. Justice S.S. Nijjar, Acting Chief Justice
Hon'ble Mr. Justice S.S. Saron

Present: Mr. V.B. Aggarwal, Advocate for the petitioners.

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The petitioners seek a mandamus directing the respondents to consider and finalise the proceedings regarding compounding of the complaint dated 15.10.1987 (Annexure-P.1) by passing a speaking order.

The Haryana State Board for Prevention and Control of Water Pollution (respondent No.2) (`Board' – for short) filed a complaint dated 15.10.1987 (Annexure-P.1) against the three petitioners Ashwani Kumar, Karam Jaiswal and Krishan Gopal Jaiswal and four others under Sections 24, 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (`Water Act' – for short). In the said complaint the petitioners and four others

have been convicted by an order dated 9.3.2004 (Annexure-P.8) passed by the learned Presiding Officer, Special Environment Court, Kurukshetra. They have been sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.4,000/- each. In default of payment of fine they are to further undergo simple imprisonment for a period of one week. An appeal against the said order of conviction and sentence is pending before the Additional Sessions Judge, Kurukshetra.

Learned counsel for the petitioners has contended that the Board has taken a policy decision dated 5.5.1995 (Annexure-P.2) to withdraw the Court cases from the Special Environment Court against those units who have closed down and had removed the objected part of the project which was causing pollution. The petitioners submitted an application on 19.9.2000 (Annexure-P.3) along with demand draft in the sum of Rs.10,000/- for consideration of withdrawal of the case. It is submitted that the unit of the petitioners has closed down and it has even surrendered the registration certificate. Therefore, their application for compounding the complaint is liable to be considered by passing a speaking order. The Board in fact has prepared agenda for withdrawal of the cases against the petitioners' unit. However, no final decision is being taken. It is, therefore, contended that the inaction of the Board to compound and withdraw the complaint pending against the petitioners has resulted in grave prejudice to them.

After giving our thoughtful consideration to the matter, we find no merit in the contentions of the learned counsel for the petitioners. The petitioners along with others had set-up a card board manufacturing unit at Panchkula. The unit was set-up without taking prior consent of the Board.

Besides, it did not instal any pollution control devices. A complaint was filed against the petitioners and four others in the Court of Presiding Officer, Special Environment Court, Kurukshetra. The learned Presiding Officer vide her detailed order dated 9.3.2004 (Annexure-P.8) has found the petitioners and four others guilty and accordingly convicted and sentenced them to imprisonment and appeal against the same is pending. The petitioners have not shown any legally enforceable statutory right to seek a direction from this Court directing the respondents to consider the compounding of their case. The reference to the policy instructions dated 5.5.1995 (Annexure-P.2) is misplaced. In fact, Annexure-P.2 is an order passed by the Commissioner and Secretary to Government Haryana, Environment Department in exercise of powers conferred under Section 18 of the Water Act whereby a Committee has been constituted for scanning cases suitable for withdrawal filed by the Board in appropriate Courts under relevant sections of the Water Act and the Air (Prevention and Control of Pollution) Act, 1981 (`Air Act' – for short). Therefore, only a Committee has been constituted for scanning cases suitable for withdrawal and there is no policy instructions therein.

The unit that the petitioners had set-up has surrendered its registration certificate which is evident from the perusal of the memo dated 9.7.2002 (Annexure-P.4) written by the General Manager, District Industries Centre, Panchkula to the Environmental Engineer of the Board. The Board has vide letter dated 23.1.2003 (Annexure-P.6) on the subject of withdrawal of complaint cases pending under the Water Act and the Air Act has sent the agenda item for consideration of the Scanning Committee. The name of the unit of the petitioners is at serial No.2 and in the remarks it is recorded as

unit closed permanently. A somewhat similar letter dated 4.3.2003 (Annexure-P.7) has been written by the Board to the Commissioner & Secretary, Government of Haryana, Department of Environment. In respect of the unit of the petitioners it is stated that the complaint was filed on 16.10.1987 under the Water Act. It is stated that the case was waiting reply of request of the unit for compromise. The inter-departmental correspondence between the Board and the Government would not confer any right on the petitioners to seek a mandamus from this Court to consider the case for compounding of the complaint. This is more so for the reason that an order of conviction and sentence has already been passed against the petitioners and others by the Presiding Officer, Special Environment Court, Kurukshetra vide order dated 9.3.2004 (Annexure-P.8). The petitioners, it may be noticed, had also filed Criminal Misc. No.3148-M of 2005 in this Court under Section 482 of the Code of Criminal Procedure seeking quashing of the complaint dated 15.10.1987. The said petition was disposed of by this Court on 2.8.2006 (Annexure-P.9). It was inter alia submitted by the petitioners in the said petition that an application had been preferred on 10.1.2005 before the Additional Sessions Judge but the same has not been disposed of. The aforesaid petition was disposed of by this Court with a direction to the learned Additional Sessions Judge, Kurukshetra to consider and dispose of the aforesaid application before final disposal of the appeal. It is stated by the petitioners that the said application has been disposed of by the learned Additional Sessions Judge, Kurukshetra with the observation that the Court had no jurisdiction to issue directions for compounding. The leaned counsel for the petitioners, however, has submitted that similar

complaints against the others have been withdrawn and, therefore, their case is also liable to be compounded. A reference has been made to the memo dated 14.7.2005 (Annexure-P.12) with regard to the complaints that have been withdrawn. We are of the view that the mere fact that the State Government has ordered withdrawal of cases in respect of others would not confer any right on the petitioners to have their complaint also compounded or withdrawn. In Chandigarh Administration and another v. Jagjit Singh & another, (1995) 1 SCC 745, it was held by the Supreme Court as follows:-

> "Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of this case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose."

Keeping in view the above position, the petitioners cannot seek any parity with the complaints that have been withdrawn.

In the light of the foregoing discussion, there is no merit in this petition and the same is accordingly dismissed.

(S.S. Nijjar)
Acting Chief Justice

October 16, 2006.

(S.S. Saron)
Judge

hsp